

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PETER K. FREI

v.

BOARD OF ASSESSORS OF
THE TOWN OF HOLLAND

Docket No. F326057

Promulgated:
June 22, 2017

This is an appeal, filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Holland ("appellee") to abate a tax on certain real estate, located in the Town of Holland, owned by and assessed to Peter K. Frei ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2015 ("fiscal year at issue").

Commissioner Chmielinski (the "Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member decision for the appellant.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Peter K. Frei, pro se, for the appellant.

JoAnne J. Higgins, MAA, Principal Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2014, the relevant assessment date for the fiscal year at issue, the appellant was the owner of a 1.01-acre vacant parcel of unimproved land, identified by the appellee as Parcel ID R40/A/1/1 and with an address of May Brook Road in Holland ("subject property"). The subject property is located on a private peninsula, which overlooks the Hamilton Reservoir. The subject property has 241 feet of frontage along May Brook Road and 402 feet of waterfront frontage along Hamilton Reservoir. The subject property does not have sufficient square footage to be a buildable lot under Hamilton's zoning regulations that were in effect during the fiscal year at issue and, therefore, the Presiding Commissioner found that it was an unbuildable lot.

For the fiscal year at issue, the assessors valued the subject property at \$19,320 and assessed a tax thereon, at the rate of \$16.23 per thousand, in the total amount of \$313.25. In accordance with G.L. c. 59, § 57, the appellant paid the tax due without incurring interest. On January 12, 2015, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application for the subject property with the assessors, which they denied on February 10, 2015. On April 27, 2015, in accordance with

G.L. c. 59, §§ 64 and 65, the appellant seasonably filed a Petition Under Formal Procedure with the Appellate Tax Board ("Board"). On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the instant appeal.

The appellee did not attend the hearing of this appeal, stating in a letter to the Board that to send a representative to Boston to defend an assessment of \$19,320 "exceeds the benefit to the Town of Holland." The appellee instead submitted exhibits consisting of jurisdictional documents and property record cards subsequent to the hearing date. The appellant attended the hearing and testified on his own behalf.

The subject property is a waterfront property located on a peninsula with three other waterfront parcels, including the also-vacant 1.6-acre Parcel ID R40/A/1/2 ("Parcel A1/2") and the 1.27-acre Parcel ID R40/A/1/0 ("Parcel A1/0"), which was improved with a vacant uninhabitable cabin and a shed. According to its property record cards, the 1.6-acre Parcel A1/2 was assessed for the fiscal year at issue at \$9,660 and the improved 1.27-acre Parcel A1/0 was assessed for \$13,960, with the land component of the assessment being \$9,660.

At the hearing, the appellant testified that, while the subject property had road frontage along May Brook Road, a steep embankment was located on the subject property adjacent to May Brook Road, blocking accessibility to the subject property. The Presiding Commissioner found the appellant's testimony on the subject property's topography to be credible, and the appellee provided no evidence refuting this claim.

On the basis of the evidence submitted, the Presiding Commissioner found that the subject property was not buildable according to Holland zoning regulations effective during the fiscal year at issue. The Presiding Commissioner further found that the steep embankment, which blocked access to the subject property, negated any value ostensibly provided to the subject property by the road frontage along May Brook Road. Therefore, the Presiding Commissioner found that the abutting waterfront peninsula properties, particularly the also vacant and unbuildable Parcel A1/2, were reliable evidence of fair market value for the subject property. The Presiding Commissioner found and ruled that \$9,700 was the best indication of value for the subject property.

Accordingly, the Presiding Commissioner issued a decision for the appellant and ordered an abatement in the amount of \$155.81 for the fiscal year at issue.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, §§ 11 and 38; **Coomey v. Assessors of Sandwich**, 367 Mass. 836, 837 (1975). Fair cash value is defined as the price on which a willing buyer and a willing seller will agree if both are fully informed and under no compulsion. **Boston Gas. Co. v. Assessors of Boston**, 334 Mass. 549, 566 (1956). Fair cash value, therefore, means fair market value. *Id.*

"[T]he Board is entitled to 'presume' that the valuation made by the assessors [is] valid unless the taxpayers ... prov[e] to the contrary.'" **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974)). Accordingly, the appellant has the burden of proving that the subject property has a lower value than that assessed. "The burden of proof is upon the taxpayer to make out a right to an abatement." **Schlaiker**, 365 Mass. at 245 (quoting **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). The appellant must

show that the assessed valuation of his property was improper. See **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 691 (1982).

In appeals before this Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors' valuation.'" **General Electric Co.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)). "Evidence of a party having the burden of proof may not be disbelieved without an explicit and objectively adequate reason. . . . If the proponent has presented the best available evidence, which is logically adequate, and is neither contradicted nor improbable, it must be credited.'" **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 470-71 (1981) (quoting L. L. Jaffe, *Judicial Control of Administrative Action* 607-608 (1965)).

In the instant appeal, the appellant offered credible testimony establishing that accessibility provided by road frontage along May Brook Road was compromised by the presence of a steep embankment located on the subject property adjacent to May Brook Road. The Presiding Commissioner found his testimony to be credible and it was

not refuted by testimony or other evidence from the appellee.

"At any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible."

G.L. c. 58A, § 12B. "The admissibility under G.L. c. 58A, § 12B, of evidence of assessments imposed on other property claimed to be comparable in nature to the subject property is largely a matter within the discretion of the board."

Assessors of Lynnfield v. New England Oyster House, Inc., 362 Mass. 696, 703 (1972). The properties used in a comparable-assessment analysis must be comparable to the subject property in order to be probative of the fair cash value. See *id.* In the instant appeal, the Presiding Commissioner found that the adjacent waterfront peninsula properties, particularly Parcel A1/2 which, like the subject property, was also unbuildable, were the best evidence of the subject property's fair market value.

The Presiding Commissioner considered all of the relevant evidence and found and ruled that the best indication of the subject property's fair market value for the fiscal year at issue was \$9,700.

Accordingly, the Presiding Commissioner issued a single-member decision for the appellant granting an abatement of \$155.81 for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: 
Richard G. Chmielinski, Commissioner

A true copy,

Attest: 
Clerk of the Board

Asst.